G. R. S. 59] GPB—1,000 20 12 1.

GENERAL AND REVENUE SECRETARIAT.

1898-1899

~~191~~ .

(Muzaffarnagar)

File No. 14

Serial Nos. 1- 11

Papers Filed.

*Month*_____

SUBJECT.

File re Khajas Register of Marriages

PREVIOUS REFERENCES.

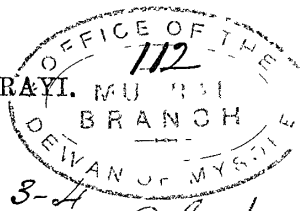
LATER REFERENCES.

Note.

All the 3 Mohomedan Deputy Commissioners state, as their opinions that marriages among Mohomedans need not necessarily be solemnized by Khazis to be legal and binding; and that the proposed measure to issue sealed forms for the Khazis Register of marriages and to have them signed by the Taluk Amildars will be of no material good. The other Deputy Commissioners also state ~~too~~ that it is not practicable to have the marriage records of Khazis attested by the Taluk Amildars.

The Representative Members have been informed of this —

2



MUZARAYI.

(General Serial No. 30.)

1893-4 S.F. 1

From

The Chief Secretary

To

The Murrai Superintendent

Dated 1st August

Despatched

Received 12-8-93

Enclosures No.

General No. 2507

~~*Muzarayi. F. No.*~~ 1262

Requesting information as to subject No. 517 discussed at the last Dasara Representative Assembly.

From the Same No 4835 & 15/9/93
1564

3

Mysore Dewan's Office

No. 2507
J 262

Bangalore. August 1893.

From

H. Chief Secretary to the
Dewan of Mysore

To

The Huzoor Superintendent
and Ex-Officio Secretary to
the Government of Mysore

Sir,

I am directed to invite your attention to subject No. 517 discussed at the meeting of the Representative Assembly held at Mysore in October 1892 and to request that you will be good enough to report what action has been taken in the matter

I have the honor to be
Sir
Your most Obedient Servant

Chief Secretary

comp'd
AK

4

Marriage

(General Serial No. 30.)

1893 S.L. 2

From

The Secretary to the Dewan
of Mysore.

To

The Dy Comrs of Distts

Dated 13"

Despatched 14" August

Received

Enclosures No.

General No. 168-75 / *No.*

Has the honor to refer to Subject No 517 (noted overleaf) brought up at the Dasara Representative Assembly held in October 1892, and to request the favour of your opinion on the same

& by 30th Sept

& Reports thereon

B O

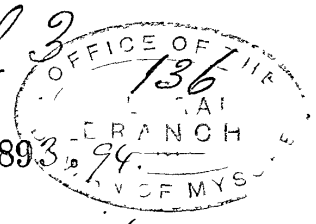
a1

Secy.

From D.C. Tumkur 1439 dy 15-8-93
D.C. Shimoga no 172 dy 17-8-93
Kolar no 640/162 dy 22-8-93
Chitaldroog no 180/10 dy 5-9-93
216-99-9-930
Kadur 4140 dy 16-9-93
From D.C. Bangalore no 360 dy 15/9/93
From D.C. Kadur no 1833 dy 12/9/93
From D.C. Mysore no 3243 dy 20/9/93
From D.C. Hassan no 2648 dy 30/9/93

5 Sl 3

General Serial No. 30)



From The Dy Commissioner
Tumkur Dt

To

The ~~Chief~~ Secretary to the ~~Durbar~~ Govt.
of Mysore.
Muzzai Deptt.

Dated 15th
Despatched 16th Augt 93.
Received 18-8-93

Enclosures No.

General No.
No. 143.

Secretary's Docket No 16875
of the 13th Instant.

Furnishes opinion
about Kazis being
required to have the pages
of their Registers of Marriages
sealed by the Amildars
& get their entries of the
marriages signed by them

No: 143. 6

Tumkur District
Deputy Commissioner's Office
Tumkur 15th August 1893.

To,

The Secretary to the Government
of Mysore —
Muzrai Department

Sir,

With reference to your Docket No: 168-75 of the 13th instant calling for my opinion about Khazis being required to have the pages of their registers of marriages sealed by the Amildars and to get their signatures to the entries of marriages made in them, I have the honor to state that this will occasion extra labor to the Khazis as they will have to go from their Villages to Amildars whenever they conduct any marriage ceremony. It will also add considerably to the Amildars' work, as they may have to make some enquiry as to the genuineness of

of the entries they are required to au=
=thenticate. The object of this measure
is stated to be the prevention of false
entries. For similar reason it may
be urged that all bonds &c should be
got authenticated by the Amildars
to prevent the fabrication of false
documents. I do not therefore know
if it is necessary to interfere with
the actions of private persons. Mar=
=riage is generally a thing which
takes place in the presence of several
persons. Therefore if a Khazi's entry
in his book about a marriage be
challenged other evidence may easily
be produced. And if the entry be
false the party at fault may be
proceeded against by the person
concerned —. I have the honor to be,

Sir,

Your most obedient Servant

H. B. Walton Acting

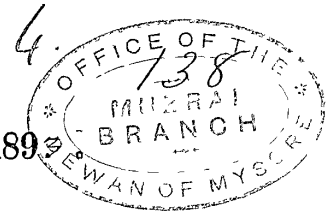
Deputy Commissioner

Tanjore District

8

Sl 4.

(General Serial No. 30.)



138

189

From The Deputy Commr
Shimoga Dt.

To

The ~~Chief~~ Secretary to the Dewan
of Mysore.

Muzrai Branch

Dated 17th

Despatched August

Received 18. 8. 96

Enclosures No.

General No. 172

No. 6

With reference to No. 164/75 dated 13th Instant enclosing opinion regarding the issue of sealed forms for the Kharjee Register of marriages

No 172
6

From
The Commissioner Shimoga District.
17th August 1893

To
The Inspr Secretary to Govt
Dewan of Mysore

Sir,

With reference to your docket No 168-75 dated 13th Instant requesting my opinion on the subject noted in the margin, I have the honor to state that the permissive rule proposed by Mr Mahamad Ali, Sub-Division Officer, French Rocks, may be made, if deemed expedient, but I venture to think that such a rule will be of no real practical use. The matter is one to be settled between the marriage parties and the Khazis who perform the marriage ceremonies and receive the usual fees. If the parties themselves are indifferent about

* Issue of sealed forms for the Khazis Register of marriages -

a correct and proper registration of their marriage, we cannot force them to do what they think unnecessary, nor can we compel Khazis to do gratis anything entailing additional trouble and work on them.

I have the honor to be,
Sir,
Your most obedient Servant
Abdul Rahman Khan Bahadur
Dy Commissioner
Shimoga

11

Sl. 5

(General Serial No. 30.)

OFFICE OF THE DEWAN OF MYSORE
MUZRAI BRANCH

1893

From

The Deputy Commissioner
Kolar District

To

The ~~Chief~~ Secretary to the Dewan
of Mysore.
Muzrai Department

Dated 22 August.

Despatched 24

Received 27-8-93

Enclosures No.

General No. 640
No. 162

Sir,

With reference to your docket No 168-75 dated the 13th instant requesting my opinion on subject No 517 (issue of sealed forms for the Kazi's Register of marriages) discussed at the meeting of the Representative Assembly held at Mysore in October 1892 I have the honour to state that it would in my opinion suffice if a regular register is opened and marriages are entered therein in the order

M. J. C. P. Bangalore.—27-1-93.—5,000.

12

of their occurrence. This register may be produced in support of such marriages when necessary.

2 If need be, the register may be kept and sealed by the minister

I have the honour to be,
Sir,
Your most obedient servant.

Deputy Commissioners
Texas

Sl 6

13

(General Serial No. 30.)

1893

OFFICE OF THE DEWAN OF MYSORE 1892 BRANCH

From The Deputy Commissioner Chitaldroog District

To

The Chief Secretary to the Dewan of Mysore.

Dated 5th September 1893 Bangalore Despd

Despatched

Received 6-9-93

Enclosures No.

General No. 180

No. 10

In reply to your letter No. 168-75 of 13th ultimo

SUBJECT

Submits report on the misfoundry in the matter of the record of marriages kept by the Khajies &c

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References (to be entered only in the Dewan's Office).

No. 180/10 Deputy Commiss Office
Chitaldrug District
Dated 4th/5 Sept 93

To,

The Secretary to the
Government of Mysore
Mungroy Department

Sir,

I have the honor with refe-
-rence to your letter No. 168-75
dated 13th ultimo, to state that
on enquiry it has been ascertained
that there is no uniformity in
the matter of the record of mar
-riages kept by the Kazies in
the Several Taluks of this District
Some have opened Registers :-
while others make entries on
loose slips of paper. This pa-

Continued

Contains the Year. month, and
date of marriage, the names of the
bride & bridegroom, the names
of the parents of the Couple, the
names of the Vakeel and of
2 witnesses and the amount of
Mahar fixed at the time of
marriage - The record bears
only the Signature of the Kaji
2 A record, thus kept, cannot
be of much value when produced
before a Court of justice - It is
certainly desirable that steps
should be taken to enhance
the probative value of the mar-
-riage record. If possible I would
supply every Kaji with a well
bound book with printed head-
-ings - The Suggestion that the
Amildar's Signature should be
obtained in every instance is
impracticable - The total

or headman of the village could more easily be called in & his signature secured. Likewise the signatures of the parents or guardians of the couple, the signatures of the couple themselves if they are capable of writing and the signatures of the Vakil and two respectable witnesses, could be obtained without any difficulty. My suggestion involves no violence to the feelings of the Mohamadan Community, who would gladly welcome this attempt to make the record of marriages among them conclusive & perfect. If necessary their wishes may be consulted before taking any action on the lines indicated above

I have the honor to be
Sir
Your most obt. Servt

Deputy Commissioner

15-9-93 17 517

(General Serial No. 30.) 236

OFFICE OF THE MUZRAI BRANCH COMMR. OF MYSORE
1893-94

From The Dy Commissioner
Bangalore District

To

The ~~Chief~~ Secretary to the Dewan of Mysore.
Muzrai Department

Dated 15th September 1893

Despatched

Received 16-9-93

Enclosures No.

General No.
D No. 360

In reply to Muz: Secy's No. 168-75 of the 14th Ultimo.

SUBJECT.

Dasara Subject No. 517 of October 1892. Submitting opinion in re Khazis registers of marriages —

References (to be entered only in the Dewan's Office).

18

D. No. 360.

a

By Commissioners' Office.
Bangalore District
Dated 15th September 93.

To
The Secretary to the Dewan
of Mysore.
Muzrai Department

Sir,

With reference to your docket No. 168-75 dated 14th Ultimo, regarding the subject No. 517 brought up at the Dasara Representative Assembly held in October 1892, I have the honor to state that I do not quite understand what Mr. Mahomed Ali meant when he said that the Khajees could not be compelled in the matter. According to the Mahomedan Law, it is not necessary that a Khazi should officiate at a marriage nor that a marriage should be registered. A marriage not solemnised by a Khazi or not registed by him is as valid at law as one solemnised

and registered by them. Any modification of the law, which is believed to be of a divine origin would be a State interference with the religious prejudices of the people concerned and when the result of the modification, as in the present case, is not such as can warrant such an interference I should not recommend any modification of the marriage law. But I think the Government has every right to require the Khazes appointed by it, to register the marriages solemnised by them in any manner the Government considers advisable.

2. An order in this direction will not clash with the law in any way. I think it is very desirable, may even necessary, that the registry by an official recognised or appointed by the Government, should be ordinarily beyond suspicion. I have no hesitation in recommending

that our Khazis should be supplied with sealed and bound registers and required to register the marriages performed by them in such registers. But I would not require every entry to be signed by the Amildar, which would cause a great deal of inconvenience, not only to the Khazees and parties concerned, but also to the Amildar.

3. A mechanical attestation by the Amildar serves no purpose; the Amildar should, if his attestation is to be of any use, satisfy himself that the entry is true, which necessitates an enquiry. Such enquiry would not only add to the work of the already overworked Amildar, but would also be harassing to the people.

I have the honor to be
Sir,
Your most Obedient Servant

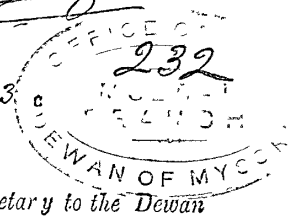
M Laughlan
for Dy Commissioner

mms

2-1

(General Serial No. 30.)

1893



From

The Chief Secretary to the Dewan of Mysore.

To

The Muzrai Superintendent and Ex-officio Secretary to the Govt of Mysore.

Dated 15th September 1893

Despatched

Received 16-9-93

Enclosures No.

General No. 4835

No. J564

This Office No. 25-07 dated 1st August 1893 J262 requesting him to report what action has been taken in the matter referred to in Subject No 517 discussed at the meeting of the Representative Assembly held in October 1892.

and subsequent reminder marginally noted

Has the honor to draw attention to the above and to request an early reply there to

"By Order"

Chief ~~Under~~-Secretary

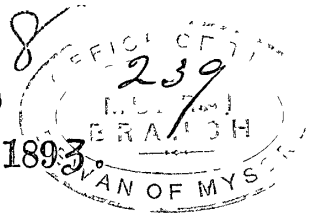
M.

Mysore Govt. C. Press, Bangalore.—9-8-93—1,000

a1
19/9/93

2251 8

(General Serial No. 30.)



From

The Deputy Commissioner
Kadur District

To

The ~~Chief~~ Secretary to the Diwan of Mysore.
Mulki Department.

Dated 16th

Despatched 16th September

Received 18-9-93

Enclosures No. nil

General No. 414 / *No.* } 1893-94.

His No. 216-9 dated 9th instant, requesting early reply to No. 168-75, dated 13th August 1893, regarding the issue of sealed forms for the Khazis Register of Marriages (Subject No. 5-17).

Has the honor to state that the please was replied to on 12th

12th instant, but that
by an error the
letter has been sent
to the Dewan's Office
from which it is
requested it may
be kindly obtained.

K Ramunny
For Deputy Commissioner
Kadur District.

Mr. J.

24 Sl 9

(General Serial No. 30.)

1893. 3582

9575

From

The Deputy Commissioner
Kadur District

To

The Chief Secretary to the Dewan
of Mysore.

Dated 12th

Despatched 12th September

Received 19.9.93

Enclosures No. 3

General No. 183 } 1893-94
No.

Submitting Opinion
on the Dassara Assembly
Subject No 517 of 1892
in re- issue of sealed
forms for the Kadur
Register of Sts.

I. 15/9/93

Cl
19/9/93

7-S

Deputy Commr's Office
Kadur District
Chikmagalur 12th September
1893

Jr 183
Enc: 3

From

The Deputy Commissioner
Kadur District

To

The Chief Secretary
to the Govt of Mysore
Muzrai department

Sir

In reply to your docket no 168-75
of the 13th Ult, calling for my opinion
on subject no 517 brought up at
the Dasara Assembly held in 1892-
in re "the issue of sealed forms to
the Khazis Register of marriages,
I have the honor to state that from
the enquiries made, I am of opinion
that the issue of sealed forms with
appropriate columns will amply
meet the object in view.

I do not advocate the necess-
ity of insisting on the attestation
of the Amildar for the

celebrated, as such a course be-
sides being in ——————— expedient,
is likely to wound the religious feelings
of the sect to an appreciable extent.

I enclose for reference, if
necessary, the Chikmagalur Anil-
dars No 404 of the 7th inst with
which is attached a sample form
of Khazis' Register kept at Chik-
magalur. In the column of wit-
nesses, the signatures of not less
than 5 respectable men may be
directed to be obtained, the signa-
tures of parents or guardians
of the bridegroom and the bride, as
well as of the bridegroom and
Khazi himself, being also taken
in other columns to be opened.

I have the honor to be
Sir
your most obedt servant

H H Sh Deputy Commr
Kadur Dist

Mungri Legislation
168-75 dt 13/8/93.

17/8/93.

[illegible] 259

404

[illegible] 7.9.93

[illegible]

[illegible]

ಮಾನ್ಯರೇ,

ನಾನು ಕೆಲಸ ಮಾಡುತ್ತಿರುವ ಕಂಪನಿಯಲ್ಲಿ ಸಂಬಳ ಹೆಚ್ಚಳ ಮಾಡಬೇಕೆಂದು ಕೋರಿ ಮನವಿ ಸಲ್ಲಿಸಿದ್ದೇನೆ. ಆದರೆ ಅದಕ್ಕೆ ಸಕಾರಾತ್ಮಕ ಉತ್ತರ ಬಂದಿಲ್ಲ. ಆದ್ದರಿಂದ ನಾನು ಈ ಕೆಲಸವನ್ನು ಬಿಡಲು ನಿರ್ಧರಿಸಿದ್ದೇನೆ. ಆದ್ದರಿಂದ ನನ್ನ ಸೇವೆಯನ್ನು ಇಂದಿನಿಂದ ಒಂದು ತಿಂಗಳ ಅವಧಿಗೆ ಮುಕ್ತಾಯಗೊಳಿಸಲು ಅನುಮತಿ ನೀಡಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ. ಅಲ್ಲಿಯವರೆಗೆ ನಾನು ಕಂಪನಿಯ ಎಲ್ಲಾ ನಿಯಮಗಳನ್ನು ಪಾಲಿಸುತ್ತೇನೆ. ಈ ಅವಧಿಯಲ್ಲಿ ನನ್ನ ಕೆಲಸದಲ್ಲಿ ಯಾವುದೇ ಲೋಪವಾಗದಂತೆ ನೋಡಿಕೊಳ್ಳುತ್ತೇನೆ. ಈ ಅವಧಿಯಲ್ಲಿ ನನ್ನ ಕೆಲಸವನ್ನು ಸಮರ್ಥವಾಗಿ ನಿರ್ವಹಿಸಲು ಅವಕಾಶ ಮಾಡಿಕೊಡಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ. ಈ ಅವಧಿಯಲ್ಲಿ ನನ್ನ ಕೆಲಸದಲ್ಲಿ ಯಾವುದೇ ಲೋಪವಾಗದಂತೆ ನೋಡಿಕೊಳ್ಳುತ್ತೇನೆ. ಈ ಅವಧಿಯಲ್ಲಿ ನನ್ನ ಕೆಲಸವನ್ನು ಸಮರ್ಥವಾಗಿ ನಿರ್ವಹಿಸಲು ಅವಕಾಶ ಮಾಡಿಕೊಡಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ.

ಧನ್ಯವಾದಗಳು,

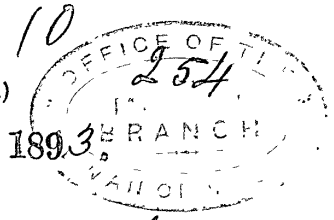
ಇಂತಿ ನಿಮ್ಮ ವಿಶ್ವಾಸಿ,

۳۱

نام قاضی	حق	وقت	مکان	مہر	ادا نہیں	ادا ہوا	و	اسم عروس	اسم نوشہ	سنہ تاریخ
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

32 — Sl 10

(General Serial No. 30.)



1893

From The Deputy Commissioner Mysore District

To Mysore
The ~~Chief~~ Secretary to the Dewan of Mysore.

Dated

Despatched 20th September 1893

Received 21-9-93

Enclosures No.

General No. 324.
No.

Regarding the issue of sealed forms for the Khajis Registers of Marriage &c

No. 324 33

DEPUTY COMMISSIONER'S OFFICE,
MYSORE DISTRICT,

Dated Mysore September 19th 1893.

From

H Mahomed Ali Esquire

Deputy Commissioner,
Mysore District.

To Moozroo

The Chief Secretary to the Dewan of Mysore,

Bangalore

SIR,

With reference to your docket No. 168-75, dated 13th August last, requesting to favor my opinion on the issue of Sealed forms for the Khajis Registers of marriage (Vide Dussera Subject No. 514 of 1892), I have the honor to state that if there was a rule having the force of Law to compel marriages to be celebrated only by a Khazi who is recognized by Government, registers can be introduced as safe guards against frauds chiefly as regards the amount of the dowry settled at the time of marriage, but the Mahomedan religion does not compel the parties to go to any particular Khazi. Any Mahomedan who can recite the prescribed Verses of the Koran can solemnize the marriage. If being so, the registers even if prescribed will only be useful in the case of such persons who as by Custom or usage resort to the Khazi of their

Mohalla-

Mohalla, and not universally

I have the honor to be

Sir,

Your most obed[t] Serv[t]

[illegible]

Offg Deputy Comm[r]

Mysore District

Comm[r]

Mys.

35

(General Serial No. 30.) Sl // 281.

1893.

From The Dy. Commr.
Hassan District.

To The Secretary to the
Govt of Mysore, Revenue
Department.

Dated 30th

Despatched September 1893

Received 2.10.93

Enclosures No. One.

General No. 2674
No.

Submitting opinion
called for, regarding
the issue of sealed forms
for the Khazis Register
of marriages. Vide Dasara
Subject No. 517 — 92.

36

Deputy Commissioner's office
Hassan District

No. 264 exp
1893

Dated, Hassan 30th September 1893.

From

P. N. Purnaiya Esquire
Deputy Commissioner
Hassan District

To,

The Secretary to the
Government of Mysore,
Huzrai Department.

Sir,

In reply to your docket No 168-75, dated 13th August 1893, anent Khajis Register of marriages, Vide Subject No 517, of the last Dasara-assembly, I have the honor to Enclose a Memorandum on the Subject dealing with it fully by Mr. Hamja Hussain B. A. B. L., acting Munsiff of Holeharsipur. —

I have the honor to be
Sir,
your most obediant servant

Deputy Commissioner
Hassan District

The Khazis' register of marriages is an important document very often required in evidence in a Court of justice. It is greatly needed in cases of marriage, dower, divorce and succession. Such cases generally arise at a time when the oral testimony, necessary for their proof is either lost or from the long lapse of time its value so much diminished as to be quite unworthy of credit. In such cases recourse is generally had to the Khazis' register of marriages. It consists of fragmentary strips of paper written in an illegible hand and very often in pencil. I have seen such pieces of papers being produced in Court. They do not bear the date, the place of residence, occupation and age of the parties. One person entered therein may be passed off for another or the pencil writing rubbed off and some new thing inserted in its place.

2. These entries are not made soon after the event has occurred. They are made many days after when the Khazi finds leisure to do so. I had to deal with a case of dower at Mysore where the paid Khazi of a Government Mosque deposed that he made the entries in a book supplied for that purpose by the Government many months after the marriage. By the negligence of the Khazi many important entries are not made and those that are greatly depend for their accuracy upon his memory.

3. The present system therefore in which loose memoranda are kept undoubtedly gives rise to false claims and vexatious litigation. There is every scope for an unprincipled man to perjure, to forge and to fabricate false evidence. The magnitude of mischief wrought can be only gauged by a reference to the important

cases

cases in which these registers are used.

4. In cases of inheritance the legiti-
-cy of the claimant is often a point
in issue. The Mahomedan law in this
respect is very lenient and extremely
tender. No doubt the presumption of
legitimacy in our codes is also a
presumption of law. But the Maho-
-medan law goes a little further and
presumes legitimacy of issue by the
continual cohabitation of man and
woman for a length of time. On the
death of a wealthy man generally a
host of claimants spring up and try
to obtain a share of the inheritance by
establishing their descent from the de-
-ceased and no greater evidence is
required than a few instances of cohabit-
-ation. In support of the marriage and
lawfulness of their birth the Khazis
register is often resorted to, and by its
help the pretenders establish their
birth

birth from the loins of their putative fathers, and thus carry off a large share of inheritance to the disappointment of many lawful claimants. Such unexpected surprise and plunder of the hard earned wealth of the ancestor blights the hopes of many persons who are brought up under an expectation that they would share his wealth and who actually shape their course and conduct suitable to such expectations. The consequence is that poverty and misery follow and reduce the once flourishing families to a state of embarrassment and insolvency.

5. The Khaz is register forms a valuable piece of evidence in cases of dower. By the law these dowers are a first charge upon the assets of the deceased and are to be paid first before the heirs can claim a share, when a

person

person has one wife and leaves children by her, the Mahar does not become the subject of much contention. But when the reval claimants are the issues of several wives this Mahar forms a fruitful source of litigation. Each party intending to appropriate the whole property in satisfaction of the Mahar, large sums of money are alleged to have been settled upon the wife and Khazis register is produced to support their claim. Sometimes it so happens that the blood relations of the owner are entirely excluded and the whole property passes to the wife of the deceased. Taking for instance, the case of a person who leaves on his death a widow and children by another wife, the widow may allege and prove by means of the register a large sum of money as her dower and in satisfaction thereof claim the whole property and leave nothing to the children

children for their share out of the inherit-
ance There is still some consolation
to think that the property descends at
least to the wife though not to the children.
But there are cases in which property
goes to the heirs of his wife, even though
his sons may be alive and capable of
inheriting. Take for example the case
in which a person first marries to a
woman, has a male issue by her of
about 18 years; then the wife dies, and
three years after, he marries another
wife. The wife dies also and within three
years the husband follows her, leaving
the said son by the former wife. It
might be thought that the son as
his heir will inherit all his property.
Now the heirs of the 2nd wife (the
brother-in-law, the mother-in-law &c.)
can successfully allege and prove
that large sums of money were
stipulated as her dower and these
completely

completely shut out his own son from a share in inheritance. I have cited only the mildest case but the consequences are still worse when the deceased is a polygamist, and leaves a large number of wives behind. His property then becomes a bone of contention and each rival claimant leans upon the Khazi and his register for support of his or her claim.

6. The Register, as at present kept, is another means of committing fraud upon innocent creditors. As I stated above, the Mahar is a first charge on the property and marriage being a valuable consideration it is as valid a debt to be discharged as any other debt secured by a bond. It often happens that when a creditor tries to realise his debt by attachment and sale of the property the wife of the debtor puts in her claim and alleges that the property was conveyed away

away to her satisfaction of her
dower or that it was settled upon her
at the time of marriage. In either
case the Khazi's register is the centre of
mischief from which radiate fraud
and deception. The position of the creditor
so far as the Mahomedans are concerned
is very insecure. He has no means to
ascertain the actual amount of
Mahar stipulated. When he advances
a loan upon the security of land he
can obtain with ordinary diligence from
the Registration Office a knowledge,
of the existence if there be any, of prior
encumbrances upon the said land.
The chances of fraud and circum-
vention are at their minimum.
With respect to the Mahomedans he is
liable to be defrauded though he might
have exhausted all the precautionary
measures which a reasonable man would
take.

take. Such things do rarely occur, but they are not beyond the reason of possibility and I have no doubt that with the increasing poverty of the Mahomedans such practices will often be adopted to defeat the lawful claims of creditors.

7. The necessity for reform being apparent, I do not think that any move by the Government in that direction will interfere with the free exercise of their religion or override any established custom or usage. It is well known that the marriage of a Mahomedan is not a sacrament but only a civil contract and contracts may be oral or documentary. With the exception of this contract of marriage, all other contracts are governed by the Anglo-Indian Laws Before the establishment of the High

Courts

Courts the Mahomedan law was applied to the Mahomedans in cases of contract and all disposition of property. This was gradually repealed and by subsequent enactments the Mahomedan law of contract and sale ceased to be applied to the Mahomedans. Thus any enactment affecting the evidence of marriage will not be unprecedented and there is no reason to suppose that it will be looked upon as an innovation. The contract of marriage is treated by the Mahomedan jurists as any other kind of contract. Say, the contract for the sale of immoveable property worth more than 100 Rupees. There is no special sanctity attached to it. When the legislature enacted for the better preservation of evidence of title that transactions dealing with immoveable

-able property of the value of Rs. 100 and upwards should be in writing and registered. I do not see why the legislature should not take similar steps to perpetuate the testimony of marriage, especially when the present system has so many concomitant evils in its train.

8. The Mahomedan law is indifferent as to the forms of evidence. It does not exclude better forms of evidence available. The proposals if carried out would be a rule of evidence and not a rule of substantive Law. The adjective law of the Mahomedans has been entirely repealed. Their rules of evidence are no longer in force in our Courts. When such is the case better forms of pre-appointed evidence may be prescribed, which are suited to the requirements of modern society.

9. The remedy which is proposed presupposes the existence of a legally constituted class of Khazis to whom the forms may be supplied. The institution once existed in our province but now it is extinct. The Khazi in Mahomedan days was a judge with Criminal and Civil powers and his jurisdiction over matrimonial cases was a branch of his general jurisdiction. With the introduction of the British Government these powers were one by one, taken away and the Khazis' Court became solely a matrimonial court. Such a court existed at Mysore till about 20 or 25 years ago, when it was abolished and its jurisdiction conferred upon Civil Courts. Engaged in such important duties the Khazi could not afford time to perform the ceremony of Nikah nor were those functions worth

his

his dignity. He would constantly depute
a Naib or assistant to perform the
service. These naibs in course of time
assumed the title of Khazi and now
perform the same duties which they
were once deputed to do. This class of
Naibs or to call them Khazis has no station
now amongst the Mahomedans. And
I do not think that it is advisable on
the part of the Government to revive
this defunct institution though it be
with crippled powers.

10. The Government can supply forms
only to a definite or ascertained number
of Khazis and in that case it will have
to appoint a suitable number for each
centre of Mahomedan population. This
will involve it in unpleasant questions
and will occupy much of its time in
disposing of vexatious applications —
that

that will pour in from all parts. The Government will have to consider the hereditary right and the qualification of the respective candidates to the post and then it will have to deal with the question of remuneration in order that the Khazis may be bound by its orders.

11 With these difficulties to start with, I do not think that the proposal can be satisfactorily worked. It is a fact that Mahomedans do not invariably call in a Khazi or Naib to perform the ceremony of Nikah. The ceremony is no part of marriage. A man can dispense with it and nevertheless contract a valid marriage. The law does not require the intervention of a priest or the interposition of a Khazi. Generally the ceremony is performed by a person who is regarded with much esteem and veneration by the family of the bride. How can these persons who perform it

51 the marriage on very rare occasion be supplied with forms?

12. Mahomedanism as may be supposed is not a lifeless religion. It has great force and vitality which being compressed within its own sphere break up the community into a number of atoms quite antagonistic to each other. Within a few years a number of sects have appeared with different tenets quite at variance with the established Hanafi school. These are branded with the name of heretics and they in return denounce the old Orthodox people as Kaffers. Such persons have scruples of conscience to call in the aid of the minister of a different sect. If there be a Government Khazi for one village of the established school of Hanafi a wahabi of the same village would not call him nor would a Sunni Khazi go to perform the right

in

in a wahabis How are we then to provide for such marriages to be recorded? The supply of forms will not surely meet such cases

13. I do not know in what way the proposal is to be adopted. I do not see how the supply of sealed forms would be a safe guard against fabrication of false evidence, unless the government appoints a Khazi responsible to the authorities; nor can I imagine how a rule can be enforced unless there is some sanction attached to its violation. What if a Khazi does not get the register signed by the Amildar? And what if he gets it signed? Does an entry in these forms exclude oral evidence and if not, where is the remedy? We will have to deal with the same oral evidence, nor can we exclude any other register which would be produced by any other Khazi.

There

There must be as I said above some sanction attached to the violation of this rule.

14. The Christian marriage act only empowers certain licensed priests to grant certificates of marriage and renders it penal for any other person to assume such duties unauthorised-ly. The certificates thus granted are very strong if not conclusive proof of such marriage. Such a system is in fact impracticable with the Mahomedans because the law has given them utmost facility in contracting marriages and has not shackled their liberty with forms and ceremonies. Proposal and acceptance being the essentials of a Mahomedan Nikah the legislature cannot introduce any reform on the model of that act without

– out interfering at the same time with their personal law.

15. In Mahomedan countries such as Arabia and Persia it is customary to draw up a deed of marriage to which both parties sign and the witnesses present attest and this is the document generally used in evidence in those countries. I do not know whether this custom prevailed in India but even if it did, the Gotha system must have laid the axe very early to its root. The adoption of the same system here will be attended with great inconvenience and hardship and considering the manners and habits of the people it will work a revolution in their social life.

16. I would therefore give the same liberty to the parties as they at present have in adopting any form of marriage they please and engaging the services

of

of any person for the occassion, whether he be a Khazi, a priest or any other layman, but to perpetuate the testimony I would require them to get it registered within a certain time. The non compliance with the rule, I would punish by excluding all oral testimony on the subject. The remedy which I propose is similar to section 17 of Indian Registration Act.

17. But I do not mean that the Registration of marriages should be attended with the same formalities as the Registration of instruments affecting immoveables; but a Regester may be kept in every Police Station in which the fact of the marriage may be recorded and the entry signed by the bridegroom and attested by the witnesses to the marriage and the Vakeel or the Agent of the bride. The particulars of Mahar will have also to

be

stated with great precision.

Sd/ M. Hamza Hussain

"Copy"

M Burrows

Deputy Commissioner

Hafazi District